

FILED

AUG 29 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**In Re US Foodservice
Inc. Litigation**

MDL No. _____

**MOTION FOR TRANSFER AND CONSOLIDATION
OF RELATED ACTIONS TO THE DISTRICT OF CONNECTICUT
PURSUANT TO 28 U.S.C. § 1407**

For the reasons set forth in the accompanying Memorandum, Waterbury Hospital, Cason, Inc., and Frankie's Franchise Systems Inc. (the "Waterbury Plaintiffs"), respectfully move the Judicial Panel on Multidistrict Litigation for an Order, pursuant to 28 U.S.C. § 1407, transferring two related actions, *Catholic Healthcare West v. Koninklijke Ahold N.V., et al.*, Civil Action No. 07-4242 and *Thomas & King, Inc. v. Koninklijke Ahold N.V., et al.*, Civil Action No. 07-608 (the "Akin Gump Actions"), to the United States District Court for the District of Connecticut for coordinated and consolidated pretrial proceedings with *Waterbury Hospital, et al. v. U.S. Foodservice, Inc.*, Civil Action No. 06-01657 (CFD) (the "Waterbury Action"). The Waterbury Plaintiffs, in support of their motion for transfer, aver as follows:

1. Pursuant to 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation is empowered to transfer "civil actions involving one or more common questions of fact . . . pending in different districts for coordinated or consolidated pretrial proceedings" in the

event the Panel determines that a transfer “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of [the] actions.”

2. Transfer of the Akin Gump Actions to the District of Connecticut for coordinated and consolidated proceedings with the Waterbury Action will conserve judicial resources, reduce the costs of litigation, prevent potentially inconsistent pretrial rulings, eliminate what would otherwise be duplicative discovery, prevent unnecessary burden on the parties and witnesses relevant to this action and permit the cases to proceed to trial more efficiently.

3. The Akin Gump Actions, for which transfer for coordinated and consolidated pretrial proceedings is proposed, arise out of the same conduct and allege virtually identical claims as the Waterbury Action. All actions are brought on behalf of a putative class of entities and individuals that purchased products from US Foodservice, Inc. (“USF”) on a cost-plus basis, and alleges that USF engaged in a scheme to fraudulently inflate the prices it charged to its ‘cost-plus’ customers through the use of sham companies known as Value Added Service Providers (“VASPs”) and agreements with other suppliers.

4. The Waterbury Action was filed in the District of Connecticut ten months before either of the Akin Gump Actions were filed, and proceedings in the Waterbury Action have significantly advanced. Among other things, (i) Lead counsel and interim class counsel have been appointed; (ii) the Connecticut District Court has developed substantial familiarity with the facts of the alleged scheme and the legal theories as a result of motion practice and procedural activity in the Waterbury Action; and (iii) party and non-party discovery in the Waterbury Action is substantially underway

5. In addition, the District of Connecticut, in which the Waterbury Action is pending, is the most convenient forum as it is in close geographic proximity to USF and all of the key witnesses in this case. Moreover, counsel for most of the parties are located on the East Coast, which is more conveniently located to the District of Connecticut than either the Northern District of California or the Southern District of Illinois where the Akin Gump Actions are pending.

For the reasons set forth above and in the accompanying Memorandum, the Waterbury Plaintiffs respectfully submit that the Panel should, pursuant to 28 U.S.C. § 1407, transfer the Akin Gump Actions to the District of Connecticut, for consolidated and coordinated pretrial proceedings with the Waterbury Action.

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